RECENT DECISIONS

CONTRACTS—IMPLIED CONTRACTS—RIGHT OF SUPPOSED WIFE TO RECOVER FOR HER SERVICES.—The plaintiff married the defendant's intestate in ignorance of the fact that he had another wife living, and they cohabited together as man and wife until his death, during which time plaintiff performed all the services of a wife. She now sues to recover the value of her services. *Held*, the plaintiff can recover. *Sanders* v. *Ragan* (N. C.), 90 S. E. 777.

It is an elementary rule of the law of contracts that where services are rendered and accepted the law will imply a promise on the part of the recipient to pay for them. *Millard* v. *Loser*, 52 Colo. 205, 121 Pac. 156; *Lockwood* v. *Robbins*, 125 Ind. 398, 25 N. E. 455; *Seals* v. *Edmondson*, 73 Ala. 295, 49 Am. Rep. 51. See 2 PARSON, CONTRACTS, 5 ed., 46. But where services are voluntarily rendered, with no expectation at the time of the rendition that they will be compensated, the law will not imply a promise on the part of the recipient to pay for such services. *Covel* v. *Turner*, 74 Mich. 408, 41 N. W. 1091; *Spadoni* v. *Giacomazzi* (Cal.), 149 Pac. 51; *Hecker* v. *Baker*, 19 Cal. App. 667, 127 Pac. 654. And it seems, on principle, that a subsequent intention on the part of the person performing the services to charge therefor should not alter the rule. *Ayland* v. *Rice*, 23 La. Ann. 75.

By the great weight of authority, where services are rendered to each other by members of the same family there is no implication that compensation will be given. On the contrary, there is a presumption that the services were intended to be gratuitous. *Bixler* v. *Sellman*, 77 Md. 494, 27 Atl. 137; *Hodge* v. *Hodge*, 47 Wash. 196, 91 Pac. 764, 11 L. R. A. (N. S.) 873. This doctrine is generally extended to cases where remote relatives, by blood or marriage, are treated as members of the family. *Wood* v. *Lewis' Estate*, 183 Mo. App. 553, 167 S. W. 666. See *Collar* v. *Patterson*, 137 Ill. 403, 27 N. E. 604; *Williams* v. *Hutchinson*, 3 N. Y. 312, 53 Am. Dec. 301. Indeed, the rule is applied where the parties are members of the same household, even though they are not related by blood or marriage. *Walker* v. *Taylor*, 28 Colo. 233, 64 Pac. 192, *Dunlap* v. *Allen*, 90 Ill. 108.

It seems to be well settled that, as a general rule, an express contract to render services as a housekeeper is valid and enforceable, though the parties live together in a state of concubinage during the time the services were rendered, unless the contract was made in contemplation of such illicit relationship. *Emmerson* v. *Botkin*, 26 Okl. 231, 109 Pac. 531, 29 L. R. A. (N. S.) 786; *Rhodes* v. *Stone*, 63 Hun. 624, 17 N. Y. Supp. 561. But if the contract for services was made in contemplation of such a relationship it is void. See *Sackstaeder* v. *Kast*, 31 Ky. Law Rep. 1304, 105 S. W. 435. There can be no recovery, however, as upon an implied contract where the parties were living together illicitly at the time the services were rendered. *Brown* v. *Tuttle*, 80 Me. 162, 13

Atl. 583; *Stringer* v. *Mathes*, 41 La. Ann. 985, 7 South. 229. See *McDonald* v. *Fleming*, 12 B. Mon. (Ky.) 286.

The authorities are conflicting on the particular point raised in the principal case. Some of the cases are in line with the decision in the instant case, holding that where a woman is deceived into contracting what she supposes to be a valid marriage, she can maintain an action on an implied contract for services rendered her supposed husband while she was living with him as his wife. *Fox* v. *Dawson*, 8 Mart. (La.) 94. But other cases hold that no contract will be implied to pay for services rendered under such circumstances. Keeping in mind the intention and relationship of the parties at the time of the rendition of the services, this would seem to be the better view. *Cooper* v. *Cooper*, 147 Mass. 370, 17 N. E. 892, 9 Am. St. Rep. 721. See *Cropsey* v. *Sweeney*, 27 Barb. (N. Y.) 310. The remedy of the plaintiff in such cases would be an action for damages for the deceit, and not an action upon an implied contract for services. *Blossom* v. *Barrett*, 37 N. Y. 434, 97 Am. Dec. 747. See *Graham* v. *Stanton*, 177 Mass. 321, 58 N. E. 1023; *Higgens* v. *Breen*, 9 Mo. 497.

CORPORATIONS—DECLARATION OF DIVIDEND—RIGHT TO RESCIND.—The directors of a corporation which had a large surplus declared a script dividend which could be paid in cash or stock at the option of the stockholders. At a later meeting they rescinded the dividend. The plaintiff brought suit to recover his proportion of the dividend, claiming that the directors had no right to rescind the dividend. *Held*, the plaintiff cannot recover. *Staats* v. *Biograph Co.*, 230 Fed. 454. See NOTES, p. 494.

CORPORATIONS—DIRECTORS—RIGHT TO COMPENSATION.—The plaintiff was a director and officer of the defendant corporation. There was no express agreement that he should be paid for his services. The corporation refused to pay him anything, and he brought suit, alleging that he was entitled to recover upon an implied contract the reasonable value of his services rendered. *Held*, the plaintiff cannot recover. *Goodin* v. *Dixie-Portland Cement Co.* (W. Va.), 90 S. E. 544.

The law does not ordinarily imply a promise on the part of the corporation to pay for the services of a director. *Rockford, etc., R. Co.* v. *Sage*, 65 Ill. 328, 16 Am. Rep. 587; *Wickersham* v. *Crittenden*, 93 Cal. 17, 28 Pac. 788. See *Brown* v. *Valley View Mining Co.*, 127 Cal. 630, 60 Pac. 424. The action of the board of directors fixing the compensation of one of their members as an officer of the corporation is prima facie voidable at the election of the stockholders. *Jones* v. *Morrison*, 31 Minn. 140, 16 N. W. 854. And the fact that each director refrains from voting on the resolution which fixes his own salary makes no difference. *Fitchett* v. *Murphy*, 26 Misc. 544, 56 N. Y. Supp. 322. The rule seems to apply to officers who render services which are regarded as naturally incident to their duties as directors. See *Martindale* v. *Wilson-Cass Co.*, 134 Pa. St. 348, 19 Atl. 680, 19 Am. St. Rep. 706; *Stacy* v. *Bank*, 4 Scammon (Ill.) 91. A contract between a corporation and a director for